

### REMARKS

In the Office Action dated October 28, 2004, claims 2-4, 6-7, 9, 13, 15, 17, 18, 30-32, 37, and 38 were rejected under 35 U.S.C. § 103 over U.S. Patent No. 6,654,613 (Maeng) in view of U.S. Patent No. 6,571,104 (Nanda); claim 10 was rejected under § 103 over Maeng in view of Nanda and U.S. Patent No. 6,341,224 (Dohi); claim 16 was rejected under § 103 over Maeng in view of Nanda and U.S. Patent No. 6,590,874 (Wang); claim 19 was rejected under § 103 over Maeng in view of Nanda and “admitted prior art”; claims 20-23 were rejected under § 103 over Maeng in view of U.S. Patent No. 5,727,033 (Weaver); claim 24 was rejected under § 103 over Maeng in view of Weaver and “admitted prior art”; and claims 26 and 28 were rejected under § 103 over Maeng in view of Weaver and Nanda.

It is respectfully submitted that the § 102(e) date of Maeng is *after* the priority date of the present application, which is the date of Provisional Application Serial No. 60/168,845, filed December 3, 1999. The § 102(e) date of Maeng is February 14, 2000, more than three months after the priority date of the present application.

In view of the fact that Maeng does not qualify as prior art against the present invention, it is respectfully requested that all rejections be withdrawn.

Moreover, Applicant would like to point out that there simply did not exist any motivation or suggestion to combine the teachings of Maeng and Nanda to achieve the claimed invention. The Office Action cited column 3, lines 47-52, and column 4, lines 7-65, along with Fig. 3 of Maeng, as teaching the detection of error in control signaling transmitted over a reverse link between a base station and a mobile unit when traffic channels are not being communicated in the reverse link. The cited passages refer to determining whether a frame error has occurred in a DCCH channel transmitted in DTX mode. Nanda, on the other hand, describes the performance of outer loop 50 and inner loop 60 power control in a CDMA 2000 communication system, where the CRC of each *reverse traffic frame* is checked to determine whether the reverse traffic frame contains an error, and if so, to vary the targeted  $E_b/N_o$ . Nanda, 2:19-40. Nanda thus teaches the traditional outer loop control in which the target  $E_b/N_o$  is varied based on errors in *traffic frames*. Maeng merely refers to the checking of a DCCH frame to determine whether the DCCH frame contains an error. There is *absolutely* no teaching or suggestion whatsoever that the traditional traffic frame-based power control performed in Nanda can be modified based on

the teachings of Maeng. The only motivation to perform such combination of Maeng and Nanda would be the teachings of the present disclosure. However, relying upon the teachings of the present disclosure to piece together unrelated elements of the prior art references is impermissible hindsight. A person of ordinary skill in the art looking to the teachings of Maeng and Nanda would not have been motivated to perform the combination proposed by the Office Action.

Thus, the obviousness rejections over Maeng and Nanda should be withdrawn because Maeng is not prior art against the present invention. Moreover, even if Maeng can qualify as prior art, a *prima facie* case of obviousness clearly cannot be established against the present invention over Maeng and Nanda.

Additionally, there also existed no motivation to combine the teachings of Maeng and Weaver to achieve the claimed invention of claim 20. The two types of power control disclosed by Weaver (power control based on frame error rate and power control based on symbol error rate) both rely on detecting errors in transmitted voice data carried in frames. *See* Weaver, 1:28-32, 2:9-17. No motivation or suggestion existed to combine the teachings of Maeng and Weaver.

Thus, the obviousness rejections over Maeng and Weaver should be withdrawn because Maeng is not prior art against the present invention. Moreover, even if Maeng can qualify as prior art, a *prima facie* case of obviousness clearly cannot be established against the present invention over Maeng and Weaver.

STATEMENT OF COMMON OWNERSHIP

Also, Wang does not qualify as prior art under 35 U.S.C. § 103(c) because the present application and Wang were, at the time the invention of the present application was made, owned by or subject to obligation of assignment to the same person (Nortel). *See* M.P.E.P § 706.02(1)(2), at 700-55.

Withdrawal of the § 103 rejection over Maeng and Nanda and Wang is therefore requested for this additional reason.

Appln. Serial No. 09/696,491  
Amendment Dated January 25, 2005  
Reply to Office Action Mailed October 28, 2004

Allowance of all claims is respectfully requested. The Commissioner is authorized to charge any additional fees and/or credit any overpayment to Deposit Account No. 20-1504 (NRT.0031US).

Respectfully submitted,

Date: Jan 25, 2008



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